

REMARKS

The Office Action has been carefully considered and the foregoing amendment made in response thereto. The present status is as follows:

- The drawings are objected to under 37 C.F.R. § 1.83(a).
- Claims 1-34 are pending in the application.
- Claims 1-25, 27, 28, 31, 33, and 34 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter Applicant regards as the invention.
- Claims 1-3, 6-9, 19-21, and 26-30 stand rejected under 35 U.S.C. § 102(b) as being clearly anticipated by Thomas (U.S. Pat. No. 444,735).
- Claims 1-3, 5-9, 19-21, and 26-30 stand rejected under 35 U.S.C. § 102(b) as being clearly anticipated by Hiss (U.S. Pat. No. 1,484,785).
- Claims 1, 2, 4-9, 19-21, and 26-30 stand rejected under 35 U.S.C. § 102(b) as being clearly anticipated by Trimpop (German 29700699).
- Claims 1-3, 5-9, 12, 14, 19-21, 26-30, and 32-34 stand rejected under 35 U.S.C. § 102(b) as being clearly anticipated by Giese (U.S. Pat. No. 5,572,805).
- Claims 1, 3, 5-9, 19-31 stand rejected under 35 U.S.C. § 102(b) as being clearly anticipated by Hockerson (WIPO 98/20763).
- Claim 10 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Hiss (U.S. Pat. No. 1,484,785).
- Claim 11 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Hiss (U.S. Pat. No. 1,484,785) in view of Kendall (U.S. Pat. No. 5,713,143).
- Claims 10, 13, and 15-18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Giese (U.S. Pat. No. 5,572,805).

In view of the above amendment and following remarks, Applicant respectfully requests reconsideration and withdrawal of the rejection of claims 1-34.

1. Applicant thanks the Examiner for participating in a telephone interview with Applicant's undersigned representative held on August 2, 2001. Applicant respectfully submits that this Amendment and Response is consistent with the discussion therein.
2. The drawings are objected to under 37 C.F.R. § 1.83(a). The Examiner has objected to the drawings stating that they fail to show the following:

- Different thicknesses (as claimed in claims 12-16, and described in the specification at, for example, p. 4, ll. 15-22).
- Different materials (as claimed in claims 17 and 18, and described in the specification at, for example, p. 4, ll. 23-28).
- An intermediate layer (as claimed in claims 32-34 as filed (amended herein to appear as claims 36-38), and described in the specification at, for example, p. 4, ll. 4-10).

Applicant has amended the drawings per the Examiner's request. To facilitate the Examiner's inspection of the drawings, Applicant has enclosed herewith three sets of professionally redrafted drawings, labeled as follows, with their content as described:

- "Original Version" – a professionally drafted version of the drawings as filed.
- "Markup Version" – a markup of the Original Version showing the changes indicated in red made per the Examiner's request.
- "Revised Version" – a professionally drafted version incorporating the changes indicated in the Markup Version.

The cross-sections depicted in Figures 1B-1G, 2B-2G, and 3B-3G show, by way of example, differing thicknesses as claimed in claims 12-16. Applicant has added shading that is consistent with MPEP § 608.02(m) to Figures 1A, 2A, 3A, and 4 to show the differing materials as claimed in claims 17 and 18. Applicant has amended the specification to describe the shading. Further, Applicant has modified Figures 3B-3G to include an intermediate layer 203 as claimed in claims 32-34 as filed (amended herein to appear as claims 36-38). Applicant has amended the specification to include a description of the new reference designator (203) associated with the intermediate layer. Applicant has also amended the specification to correct a typographical error in referencing figures 3B-3D.

With respect to Figure 3A, Applicant has added the inadvertently omitted reference designator 206 identifying the forefoot region. No new matter has been added, since "forefoot region 206" is described in the specification as filed at, for example, p. 10, l. 24.

Applicant has amended the specification to include the inadvertently omitted descriptions of reference designators 107, 207, and 228. No new matter has been added, since reference designators 107, 207, and 228 appear in the drawings as filed. As discussed below, the added descriptions are consistent with the descriptions of other embodiments present in the specification as filed.

Reference designator 107 appears in Figures 2A through 2D, and reference designator 207 appears in Figure 3A. In comparison, Figure 1A shows another embodiment of the invention where reference designator 7 refers to a toe portion. The specification describes the toe portion 7 at, for example, p. 6, l. 8. Consequently, it is clear that Applicant adopted a common reference designator numbering scheme (i.e., ending in “7,” as in “107” and “207”) to identify the toe region in the various embodiments of the invention. Accordingly, Applicant has amended the specification to associate reference designators 107 and 207 with the toe portion shown in Figures 2A through 2D, and Figure 3A, respectively.

Reference designator 228 appears in Figures 3A, 3C, and 3D. In comparison, Figures 2A, 2C, and 2D show another embodiment of the invention where reference designator 128 refers to side elements. The specification describes the side elements 128 at, for example, p. 8, l. 4. Similar to the above, it is clear that Applicant adopted a common reference designator numbering scheme (i.e., ending in “28,” as in “228”) to identify the side elements in the various embodiments of the invention. Accordingly, Applicant has amended the specification to associate reference designator 228 with the side elements shown in Figures 3A, 3C, and 3D.

The aforementioned changes to the drawings and specification do not add new matter. The specification as filed described the features addressed by the changes made herein. (For example, the bulleted list above cites pertinent portions of the specification (as filed) and the claims (as filed) that included references to the thickness, material, and layer issues raised by the Examiner.)

Applicant respectfully submits that the aforementioned changes to the drawings are sufficient to show every feature of the invention as claimed. After the Examiner’s approval of these changes, Applicant will incorporate them into the final drawings. Applicant will submit final drawings after receipt of the Notice of Allowability.

3. Claims 1-25, 27, 28, 31, 33, and 34 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter Applicant regards as the invention.

The Office Action states that in claims 1-8, 14, and 27 the phrase “finger-shaped” is vague and indefinite. Applicant has cancelled claims 2 and 3. Applicant appreciates the Examiner’s acceptance of the term “elongated” as a replacement for the phrase “finger-shaped” and has amended claims 1, 4-8, 14, and 27 accordingly. Applicant respectfully submits that the term “elongated” is sufficiently clear and definite and therefore renders claims 1, 4-8, 14, and 27, as amended herein, allowable.

The Office Action further states that in claim 5 the phrase “a fold line” is vague and indefinite. Fold lines 122, 222 appear in Figures 2A and 3A. As detailed in the specification at p. 8, ll. 11-12 and p. 10, ll. 23-24, the fold lines 122, 222 are essentially indentations that facilitate bending in certain areas of the chassis 102 and chassis/skin 201. As discussed with, and endorsed by, the Examiner, Applicant has amended claim 5 to replace the term “fold line” with “indentation.” Applicant respectfully submits that claim 5, as amended herein, is sufficiently clear and definite and is therefore allowable.

The Office Action further states that in claims 20 and 28 the phrase “comprising a plurality of elements” is confusing, vague and indefinite. Applicant has amended claims 20 and 28 to include “elongated” before the “elements” and “element” terms. For the same reasons discussed above in conjunction with claims 1, 4-8, 14, and 27, Applicant respectfully submits that claims 20 and 28 are sufficiently definite and are therefore allowable.

The Office Action further states that claim 21 is confusing, vague and indefinite. For consistency, Applicant has also amended claim 21 by including “elongated” before the “elements” term. For the same reasons discussed above in conjunction with claims 1, 4-8, 14, and 27, Applicant respectfully submits that claim 21 is sufficiently definite and is therefore allowable.

The Office Action further states that in claims 24, 25, and 31 the phrase “is configured to extend from ... into a cleat” is vague and indefinite. Applicant respectfully submits that use of

the term “cleat” is clear to one of skill in the art. The terms of a claim carry their ordinary meaning, unless it appears that the inventor used them differently. *ZMI Corp. v. Cardiac Resuscitator Corp.*, 844 F.2d 1576, 1579 (Fed. Cir. 1988). A “cleat” is defined as a projecting piece of metal or hard rubber attached to the underside of a shoe to provide traction. *The American Heritage® Dictionary of the English Language, Fourth Edition*, Houghton Mifflin Company, 2000. The term “cleat,” as used throughout the instant application, conveys a meaning that is not inconsistent with the dictionary definition. Nonetheless, Applicant has cancelled claims 24 and 25. Applicant appreciates the Examiner’s suggestion concerning this issue and has amended claim 26 (from which claim 31 indirectly depends) to include at least one cleat, and amended claim 31 to claim the lug in combination with the cleat. Consequently, Applicant respectfully submits that claim 31 is sufficiently definite and is therefore allowable.

The Office Action further states that in claim 33 the phrase “is a film” is vague and indefinite. Applicant describes the “film” in the specification at, for example, p. 4, ll. 4-9 and p. 12, ll. 8-16. Furthermore, a “film” is a thin skin or membrane. *The American Heritage® Dictionary of the English Language, Fourth Edition*, Houghton Mifflin Company, 2000. As discussed with the Examiner, Applicant’s use of the term “film” conveys a meaning that is not inconsistent with the dictionary definition. (Note that in light of Applicant’s addition of claim 35 and the subsequent need to correct claim dependencies and preserve proper claim order, Applicant has cancelled claims 32-34 and added them as new claims 36-38. Consequently, claim 33 corresponds to new claim 37.) Applicant appreciates the Examiner’s acceptance of the explanation above, and respectfully submits that claim 37 is sufficiently clear and definite and is therefore allowable.

Claims 9-13, 15-19, 22, and 23, all rejected under 35 U.S.C. § 112, second paragraph, depend, directly or indirectly, from independent claim 1 or 20. In view of the aforementioned amendments made to claims 1 and 20, Applicant respectfully submits that the claims 9-13, 15-19, 22, and 23 are also sufficiently definite and are therefore allowable.

Claim 34 was rejected under 35 U.S.C. § 112, second paragraph. As discussed above, Applicant has cancelled claim 34 and added it as new claim 38 to correct claim dependencies and preserve proper claim order. Claim 38 depends from new claim 37 (claim 33 as filed). In view

of the discussion above relative to claim 37, Applicant respectfully submits that claim 38 is also sufficiently definite and is therefore allowable.

Applicant has cancelled claims 2, 3, 24, 25, and 34, and respectfully requests reconsideration and withdrawal of the rejection of non-cancelled claims 1, 4-23, 27, 28, and 31 under 35 U.S.C. § 112, second paragraph.

4. Claims 1-3, 6-9, 19-21, and 26-30 stand rejected under 35 U.S.C. § 102(b) as being clearly anticipated by Thomas (U.S. Pat. No. 444,735). Applicant respectfully traverses this rejection as applied to the claims as amended.

Thomas discloses an insole with metallic plates Z and C. Col. 1, ll. 27-30. Applicant has cancelled claims 2 and 3, and amended independent claims 1, 20, and 26 to add “polymeric” before “chassis.” No new matter has been added, since support for this change can be found in the specification at, for example, p. 11, ll. 3-10. This amendment to independent claims 1, 20, and 26 clearly and patentably distinguishes Applicant’s invention over Thomas, thereby rendering claims 1, 20, and 26 allowable. As the remaining non-cancelled claims all depend, directly or indirectly, from independent claim 1, 20, or 26, Applicant respectfully submits that the remaining claims are allowable as well.

Applicant has cancelled claims 2 and 3, and respectfully requests reconsideration and withdrawal of the rejection of non-cancelled claims 1, 6-9, 19-21, and 26-30 under 35 U.S.C. § 102(b) as being clearly anticipated by Thomas.

5. Claims 1-3, 5-9, 19-21, and 26-30 stand rejected under 35 U.S.C. § 102(b) as being clearly anticipated by Hiss (U.S. Pat. No. 1,484,785). Applicant respectfully traverses this rejection as applied to the claims as amended.

Hiss discloses an arch supporting apparatus that is constructed of any firm material, e.g., leather. Col. 8, ll. 62-64. Applicant submits that the aforementioned addition of “polymeric” before “chassis” in independent claims 1, 20, and 26 also clearly and patentably distinguishes Applicant’s invention over Hiss, thereby rendering claims 1, 20, and 26 allowable. As the remaining non-cancelled claims all depend, directly or indirectly, from independent claim 1, 20, or 26, Applicant respectfully submits that the remaining claims are allowable as well.

Applicant has cancelled claims 2 and 3, and respectfully requests reconsideration and withdrawal of the rejection of non-cancelled claims 1, 5-9, 19-21, and 26-30 under 35 U.S.C. § 102(b) as being clearly anticipated by Hiss.

6. Claims 1, 2, 4-9, 19-21, and 26-30 stand rejected under 35 U.S.C. § 102(b) as being clearly anticipated by Trimpop (German 29700699). Applicant respectfully traverses this rejection as applied to the claims as amended.

Trimpop discloses a plate extending from the arch-area to the toe-area, the plate being at least 50% the width of the [ground] contact surface, extending from at least the toe area to the arch area, and having one or more spring-back elements.

Applicant has amended independent claims 1, 20, and 26, to indicate that at least one elongated element of the chassis extends into substantially the entire length of a heel portion of the article of footwear. When the chassis is installed in the article of footwear, the elongated elements extend from the rearmost extent of the heel portion of the article of footwear to the toe portion. The chassis can also extend substantially along the entire length of the heel portion. These attributes clearly and patentably distinguish the Applicant's invention over Trimpop, thereby rendering claims 1, 20, and 26 allowable. As the remaining non-cancelled claims all depend, directly or indirectly, from independent claim 1, 20, or 26, Applicant respectfully submits that the remaining claims are allowable as well.

Applicant has cancelled claims 2 and respectfully requests reconsideration and withdrawal of the rejection of non-cancelled claims 1, 4-9, 19-21, and 26-30 under 35 U.S.C. § 102(b) as being clearly anticipated by Trimpop.

7. Claims 1-3, 5-9, 12, 14, 19-21, 26-30, and 32-34 stand rejected under 35 U.S.C. § 102(b) as being clearly anticipated by Giese (U.S. Pat. No. 5,572,805). Applicant respectfully traverses this rejection as applied to the claims as amended.

Giese discloses a composite shoe bottom with a lower layer 2, an upper layer 3, and stabilizers 19, 33 molded therebetween above the lower layer 2. Col. 11, l. 67 – col. 12, l. 3; figures 112 – 116. In contrast to Giese figures 111 – 116, Applicant's chassis extends beyond the ball of the foot into the toe portion 7. Figure 1A. Applicant has amended independent claims 1,

20, and 26 to clarify this attribute. Furthermore, Giese figure 127 does not show Applicant's claimed elongated element. Applicant submits that the aforementioned change clearly and patentably distinguishes Applicant's invention over Giese, thereby rendering claims 1, 20, and 26 allowable. As the remaining non-cancelled claims all depend, directly or indirectly, from independent claim 1, 20, or 26, Applicant respectfully submits that the remaining claims are allowable as well.

Further, with respect to new claims 36-38 (claims 32-34 as filed), each depends indirectly from independent claim 26 through new claim 35. Applicant has removed the "skin" language from claim 26 and added the language in new claim 35. In view of the aforementioned amendments made to claim 26, Applicant respectfully submits that claims 36-38 are clearly and patentably distinguished over Giese, and are therefore allowable. Nevertheless, the "skin layer" the Office Action indicates is shown in Giese figures 112 – 115 appears to be the bottom (unlabeled) layer in those figures, corresponding to the rubber outsole (reference designator 5) in figures 11 – 15 (col. 8, ll. 48-50). Applicant's skin is a replacement for the outsole. Spec. p. 2, ll. 10-12. Applicant's skin and chassis are integrally formed by injection molding. Spec. p. 3, ll. 15-18; p. 11, ll. 14-19. Consequently, Applicant's resulting chassis/skin structure 201 corresponds to the bottom layer in Giese figures 112 – 115. Giese obtains structural benefits by including the stabilizer 19 above the bottom layer. In contrast, Applicant gets structural benefits from the integrally formed chassis/skin 201 that comprises the lowermost layer of Applicant's footwear article. Applicant respectfully submits that this clearly and patentably distinguishes Applicant's invention over Giese.

With respect to the intermediate film the Office Action indicates is shown in Giese figures 112 – 115, there is an unlabeled layer (hereinafter, "secondary layer") shown immediately above the bottom layer in these figures. Figures 113 – 115, which are frontal cross sectional views, clearly show the bottom layer wraps up over the medial and lateral sides of the secondary layer. Furthermore, figure 111 (a perspective view of the shoe sole) and figure 116 (a view along a sagittal axis from the heel area toward the toe) show only the bottom layer. Consequently, the Giese secondary layer is not externally visible. This contrasts with Applicant's disclosure where the intermediate layer is used to enhance visual appeal. Spec. p. 12, ll. 8-16. Notwithstanding

the aforementioned amendments made to claim 26 that render claims 36-38 allowable, Applicant has amended claim 36 to clarify this external visibility attribute.

Applicant has cancelled claims 2, 3, and 32-34, and respectfully requests reconsideration and withdrawal of the rejection of non-cancelled claims 1, 5-9, 12, 14, 19-21, and 26-30 under 35 U.S.C. § 102(b) as being clearly anticipated by Giese.

8. Claims 1, 3, 5-9, and 19-31 stand rejected under 35 U.S.C. § 102(b) as being clearly anticipated by Hockerson (WIPO 98/20763). Applicant respectfully traverses this rejection as applied to the claims as amended.

Hockerson discloses a cleat frame with a generally flat base, a upwardly curved toe shield, and downwardly extending cleat supports. The U-shaped walls of the cleat supports help absorb impact forces and distribute them across the cleat frame.

Applicant has amended independent claims 1, 20, and 26 to include a limitation that the chassis be substantially flat in the toe region. Applicant submits that the aforementioned change clearly and patentably distinguishes Applicant's invention over Hockerson, thereby rendering claims 1, 20, and 26 allowable. As the remaining non-cancelled claims all depend, directly or indirectly, from independent claim 1, 20, or 26, Applicant respectfully submits that the remaining claims are allowable as well.

Applicant has cancelled claim 3 and respectfully requests reconsideration and withdrawal of the rejection of non-cancelled claims 1, 5-9, and 19-31 under 35 U.S.C. § 102(b) as being clearly anticipated by Hockerson.

9. Claim 10 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Hiss (U.S. Pat. No. 1,484,785). Applicant respectfully submits that the aforementioned amendments made to claim 1 (from which claim 10 indirectly depends) render claim 10 allowable.

Further, Hiss discloses an aperture 6 in a heel plate 3. The aperture 6 is "for convenience in lasting the shoe and providing a space for tacks." Col. 4, ll. 103-105. Consequently, the purpose of the aperture 6 is to facilitate manufacture of the shoe. There is no disclosure of any ergonomic purpose associated with aperture 6. In contrast, Applicant's opening 12, and chevron

shaped openings 112, 212, provide cushioning for the heel and accommodates cleat formation. Spec. p. 10, ll. 1-4.

There is no motivation to modify Hiss because Hiss teaches away from the claimed invention.

A reference may be said to teach away when a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant. The degree of teaching away will of course depend on the particular facts; in general, a reference will teach away if it suggests that the line of development flowing from the reference's disclosure is unlikely to be productive of the result sought by the applicant. See *United States v. Adams*, 383 U.S. 39, 52, 148 USPQ 479, 484 (1966) ("known disadvantages in old devices which would naturally discourage the search for new inventions may be taken into account in determining obviousness"). *In re Gurley*, 31 USPQ 2d 1130, 1131 (Fed. Cir. 1994)

The purpose of the Hiss aperture 6 is to facilitate the lasting and tacking steps in manufacturing. In particular, the presence of tacks in the aperture 6 would create a stiff area under the wearer's heel, as well as obstruct areas preferably left open for cleat formation. Conversely, Applicant seeks to increase cushioning and comfort for the wearer in the heel area and allow for the proximate presence of cleats. The obstruction and stiffness created by the addition of tacks in the aperture 6 would thwart these objectives. Consequently, a person of ordinary skill would not look to Hiss since the desired results (i.e., increased cushioning and comfort; cleat formation) are inconsistent with the structure Hiss discloses.

In view of the aforementioned amendments to claim 1 (from which claim 10 indirectly depends) and the discussion above, Applicant respectfully submits that claim 10 is clearly and patentably distinguished over Hiss and is therefore allowable. Applicant respectfully requests reconsideration and withdrawal of the rejection of claim 10 under 35 U.S.C. § 103(a) as being unpatentable over Hiss.

10. Claim 11 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Hiss (U.S. Pat. No. 1,484,785) in view of Kendall (U.S. Pat. No. 5,713,143). Applicant respectfully submits that the aforementioned amendments made to claim 1 (from which claim 11 indirectly depends) render claim 11 allowable.

Further, Kendall discloses an adaptive orthotic system that helps improve a person's gait efficiency and reduce stress to the extremities. The system includes an insole that self-adjusts for variations in gait, foot and shoe size. Col. 3, ll. 1-3. Accommodative apertures 37, 46 permit the self-adjustment of the insole. Col. 7, ll. 51-61; col. 8, ll. 2-4. As stated above, the purpose of the Hiss aperture 6 is to facilitate the lasting and tacking steps in manufacturing.

Applicant's invention is nonobvious because there is no motivation to combine Hiss with Kendall since:

- (i) The intended function of the apertures is destroyed by the combination. The Hiss aperture 6 is used in the manufacturing process during the lasting and tacking steps. Such uses would bind or otherwise constrict the support apparatus, particularly the heel plate 3. In contrast, the Kendall accommodative apertures 37, 46 provide gaps for movement and self-adjustment of the insole. By combining Hiss and Kendall, the movement afforded by the accommodative apertures 37, 46 would be eliminated by, for example, the presence of tacks in the aforementioned gaps. This would render the combination non-functional.
- (ii) The Hiss and Kendall apertures address different problems. Hiss aperture 6 is concerned with facilitating manufacturing. Kendall accommodative apertures 37, 46 permit self-adjustment of the insole. Applicant's invention is nonobvious if the elements cited in the prior art typically deal with different problems. *See, e.g., Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 221 USPQ 481 (Fed. Cir. 1984).

Furthermore, Applicant's invention is not obvious because Hiss teaches away from the combination with Kendall. An invention is nonobvious where one prior art reference teaches away from the combination with a second prior art reference. *In re Rudko*, Civ. App. No. 98-1505, Slip Op. at 5-6 (Fed. Cir. May 14, 1999) (unpublished). As stated above, a person of ordinary skill would not seek to combine the structural features associated with manufacturing (i.e., the Hiss aperture 6) with other features associated with self-adjustment during use (i.e., the Kendall accommodative apertures 37, 46). In particular, the flexibility afforded by the Kendall accommodative apertures 37, 46 would present difficulties during manufacturing, where

dimensional variation must be kept to a minimum to ensure repeatability and uniformity of the finished product.

In view of the aforementioned amendments to claim 1 (from which claim 10 indirectly depends) and the discussion above, Applicant respectfully submits that claim 11 is clearly and patentably distinguished over the cited references, either alone or in combination, and is therefore allowable. Applicant respectfully requests reconsideration and withdrawal of the rejection of claim 11 under 35 U.S.C. § 103(a) as being unpatentable over Hiss in view of Kendall.

11. Claims 10, 13, and 15-18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Giese (U.S. Pat. No. 5,572,805). Applicant respectfully submits that the aforementioned amendments made to claim 1 (from which claims 10, 13, and 15-18 indirectly depend) render claims 10, 13, and 15-18 allowable.

Further, Giese discloses a composite shoe bottom with a lower layer 2, an upper layer 3, and stabilizers 19, 33 molded therebetween above the lower layer 2. Col. 11, l. 67 – col. 12, l. 3; figures 112 – 116. The stabilizers 19, 33 include a heel cutout 28 and heel opening 36, respectively. With respect to claim 10, there is no motivation to modify Giese because Giese teaches away from the claimed invention. Giese discloses the presence of an optional heel cutout 28 and heel opening 36, apparently to exploit the wearer's heel tissue for cushioning. Col. 12, ll. 7-25. As such, the heel cutout 28 and heel opening 36 need only be sufficiently large and generally located for "forcing the heel's fatty tissue beneath the heel for cushioning." Col. 12, ll. 24-25. Furthermore, the heel cutout 28 need not be present ("... stabilizer 19 which may have a heel cutout 28 ..." Col. 12, ll. 7-8 (emphasis added)). Although Applicant's chevron openings 112, 212 perform a similar function, their presence, shape, and position are specific to permit cleat formation. Spec p. 10, ll. 1-4. A person of ordinary skill, after reading Giese, would be discouraged from following Giese, because the general configuration of the optional heel cutout 28 and heel opening 36 would frustrate the desired result of creating a configuration that permits cleat formation.

With respect to claims 13, 15, and 16, the Office Action states that it would have been obvious to vary the thickness of the Giese structure shown in figures 111 – 116 or figure 127, as taught by Giese figures 93, 102, and 105. Applicant respectfully submits that such a

modification is nonobvious because it does not result in Applicant's invention as claimed. Specifically, and in contrast to Applicant's invention, Giese figures 117 – 121 show that the stabilizer 19 does not extend beyond the ball of the foot into the toe portion 7. Furthermore, Giese figure 127 does not show Applicant's claimed elongated element.

With respect to claims 17 and 18, Applicant's chassis 2, 102, 202 can include different material types with different material properties. Spec. p. 13, ll. 3-6. Thus, claims 17 and 18 affect the internal structure of Applicant's footwear (i.e., the encapsulated chassis). In contrast, and as referenced in the Office Action (p. 5), Giese discloses the use of different materials in the sole portion 38. Col. 13, ll. 15-40. As shown in, for example, Giese figure 137, the sole portion (or outsole) 38 is attached to the combination of the upper layer 3 and lower layer 2, and is therefore external to and independent from the stabilizer 19, 33. Giese varies external materials to improve traction and abrasion resistance. Col. 12, ll. 45-47. Applicant, however, claims varying the materials of the internal chassis 2, 102, 202 to affect support and power transfer. Spec. p. 13, ll. 6-8. A person of ordinary skill would not seek to modify Giese since the problems Giese addresses (i.e., traction and abrasion) differ from those addressed by Applicant. Consequently, Giese teaches away from Applicant's invention, thereby rendering the suggested modification nonobvious.

In view of the aforementioned amendments to claim 1 (from which claims 10, 13, 15-18 indirectly depend) and the discussion above, Applicant respectfully submits claims 10, 13, 15-18 are clearly and patentably distinguished over Giese and are therefore allowable. Applicant respectfully requests reconsideration and withdrawal of the rejection of claims 10, 13, 15-18 under 35 U.S.C. § 103(a) as being unpatentable over Giese.

CONCLUSION

In view of the foregoing, Applicant submits that non-cancelled claims 1, 4-23, and 26-31, and new claims 35-38, are clearly and patentably distinguished over the cited references, either alone or in combination, and are therefore allowable. Applicant respectfully request entry of this Amendment and Response, reconsideration, and early favorable action by the Examiner.

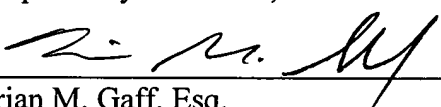
The Examiner is cordially invited to contact Applicant's undersigned representative at the number listed below to discuss any outstanding issues.

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VERSION OF AMENDED ITEMS WITH MARKINGS TO SHOW CHANGES MADE

August 29, 2001

IN THE SPECIFICATION:

Paragraph beginning on page 8, line 10 paragraph:

Fig. 2A depicts a bottom plan view of another embodiment of the chassis 102 of the present invention. In this embodiment, a forefoot portion 106 and a rearfoot portion 108 extend into a toe portion 107 and a heel portion 109, respectively. In this embodiment of the chassis 102, the finger-shaped elements 110 in the forefoot portion 106 have fold lines 122 as well as spaces 114 therebetween. The fold lines 122 and spaces 114 of the finger-shaped elements allow for greater flexibility in the forefoot region 106. In the process of walking or running, the forefoot region 106 of a wearer bends as he shifts his weight from his heel to his forefoot and then pushes off with the forefoot. These finger-shaped elements 110 and spaces therebetween 114 allow for greater and easier bending in this region.

Paragraph beginning on page 10, line 17 paragraph:

Figs. 3A-3I depict still another embodiment of the chassis 202 of the present invention. In this embodiment, the chassis 202 is integrally formed with a skin 238. Also included are side elements 228. Cleats 234 extend from a bottom side of the chassis/skin construct 201. Lugs 230 extend from the bottom side of the chassis 202 into some of the cleats 232. Other cleats 234 may not have lugs. As described above, the lugs 230 and chassis 202 form a system for improved comfort, greater maneuverability, and more powerful movements.

Paragraph beginning on page 10, line 23 paragraph:

Fig. 3A shows a plan view of the bottom side of the chassis/skin 201. The finger-shaped elements 210 in the forefoot region 206 have fold

lines 222 to facilitate flexing at these regions. The forefoot region 206 includes a toe portion 207. The opening 212 in the heel portion 209 is in the shape of a chevron. Figs. 3B-3C-3D show a cross-sectional view along section 3B-3B, a medial side view, and a lateral side view, respectively, of the chassis/skin construct 201. Figs. 3E-3G show cross-sectional views along sections 3E-3E, 3F-3F, and 3G-3G of the chassis/skin construct 201. Figs. 3H-3I show end views of a toe view and a heel view, respectively.

Paragraph beginning on page 12, line 8:

It is also contemplated that an intermediate layer 203 of a liquid or a solid material, such as a thin film, can be disposed between the chassis 202 and skin 238 and that all three components (the chassis 202, intermediate layer 203, and skin 238) are compatible with each other to create an integrally formed chassis/skin 201 structure. The intermediate liquid or solid material may be any material that allows the chassis 202 and skin 238 to be compatible as defined herein. For example, the intermediate layer 203 may be an ink, a powder, a fabric, or a film of a natural or synthetic material. In one embodiment, the film is created with a color and/or design and the skin 238 is made of a transparent material so that the color and/or design of the film can be readily viewed through the skin 238 to enhance visual appeal.

Paragraph beginning on page 13, line 4:

The chassis 2, 102, 202, or chassis/skin construct 201 can also be designed to provide more stiffness to certain areas of the article of footwear and less stiffness to other areas by varying the types of material used to manufacture the chassis 2, 102, 202 or chassis/skin construct 201. Thus, stiffer materials can be placed in areas requiring greater support and power transfer and less stiff materials can be placed in areas requiring greater flexibility, such as a forefoot flex region. The different shading in

Figures 1A, 2A, and 3A defines, by way of example, areas where the various types of materials may be used.

Paragraph beginning on page 13, line 9:

FIG. 4 shows another embodiment of the chassis 302 of the present invention. The chassis 302 includes three elements. In this embodiment, each element 310 includes a forefoot portion 306, a midfoot portion 304, and a rearfoot portion 308. The elements 310 extend substantially the entire length of an article of footwear. The elements 310 lie adjacent to one another and may form spaces 314 therebetween, as depicted. In a preferred embodiment, the chassis 302 is designed to support and work with cleats. Thus, elements 310 are placed and spaced in the footwear to support a cleat extending directly or indirectly from the bottom of the element 310. As above, the different shading in Figure 4 defines, by way of example, areas where differing types of materials may be used.

IN THE CLAIMS:

1. (Amended) A polymeric chassis for installation in an article of footwear, the chassis comprising:

a midfoot portion;

a forefoot portion, including at least one elongated ~~finger-shaped~~ element that, when the chassis is installed in the article of footwear, extending extends from the midfoot portion into substantially an entire length of a toe portion of the article of footwear, wherein the chassis is substantially flat in the toe portion;

and
a rearfoot portion, including at least one elongated ~~finger-shaped~~ element that, when the chassis is installed in the article of footwear, extending extends from the midfoot portion into the substantially an entire length of a heel portion of the article of footwear from the midfoot portion.

Am - Curved in Drawing

4. (Amended) The chassis of claim 1, wherein the forefoot portion comprises three elongated finger-shaped elements.
5. (Amended) The chassis of claim 1, wherein at least one elongated finger-shaped element comprises at least one fold-line indentation along a width of the chassis.
6. (Amended) The chassis of claim 1, wherein the rearfoot portion comprises two elongated finger-shaped elements.
7. (Amended) The chassis of claim 4, wherein the forefoot portion elongated finger-shaped elements are disposed adjacent one another.
8. (Amended) The chassis of claim 6, wherein the rearfoot portion elongated finger-shaped elements are disposed adjacent one another, along at least a portion of a longitudinal length thereof.
14. (Amended) The chassis of claim 12, wherein the first portion of the chassis comprises a first elongated finger-shaped element and the second portion comprises a second elongated finger-shaped element.
20. (Amended) A polymeric chassis for installation in an article of footwear, the chassis comprising a plurality of elongated elements that, when installed in the article of footwear, extend substantially along an entire length of the article of footwear from a heel portion of the article of footwear to a toe portion of the article of footwear, each elongated element comprising:
 - a midfoot portion;
 - a forefoot portion; and
 - a rearfoot portion;wherein the chassis is substantially flat in the toe portion.

21. (Amended) The chassis of claim 20, wherein the elongated elements are disposed adjacent one another.

26. (Amended) An article of footwear including a sole with at least one cleat, the sole comprising a polymeric chassis ~~integrally formed with a skin~~, wherein the chassis extends substantially along an entire length of (i) a heel portion of the article of footwear, and (ii) a toe portion of the article of footwear, and wherein the chassis is substantially flat in the toe portion.

27. (Amended) The article of footwear of claim 26, wherein the chassis comprises:

a midfoot portion;

a forefoot portion, including at least one elongated ~~finger-shaped~~ element extending toward a toe portion from the midfoot portion; and

a rearfoot portion, including at least one elongated ~~finger-shaped~~ element extending toward a heel portion from the midfoot portion.

28. (Amended) The article of footwear of claim 26, wherein the chassis comprises a plurality of elongated elements extending generally from a heel portion to a toe portion, each elongated element comprising:

a midfoot portion;

a forefoot portion; and

a rearfoot portion.

31. (Amended) The article of footwear of claim 30, wherein the at least one lug is ~~configured to extend from the bottom side of the chassis~~ projects into a ~~the~~ cleat.

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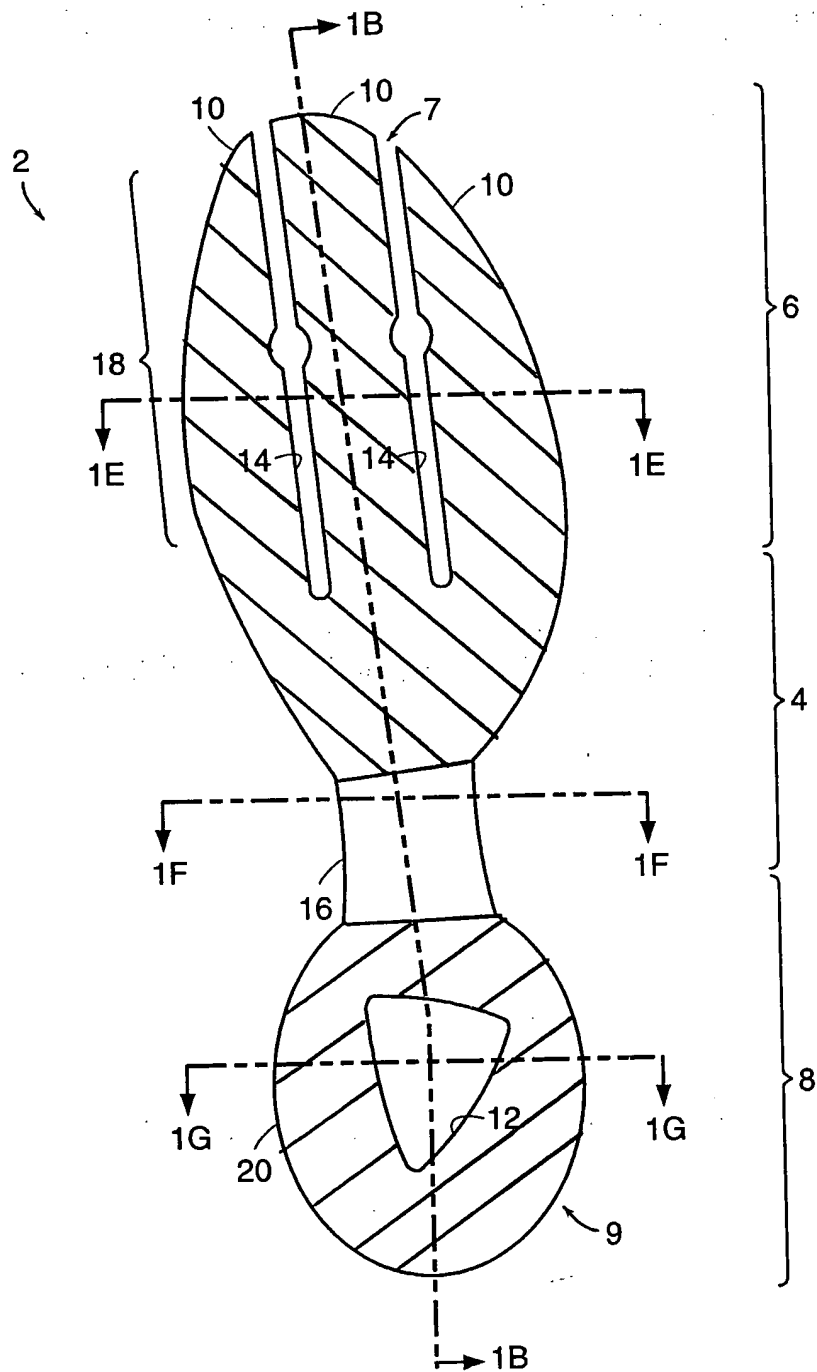


FIG. 1A

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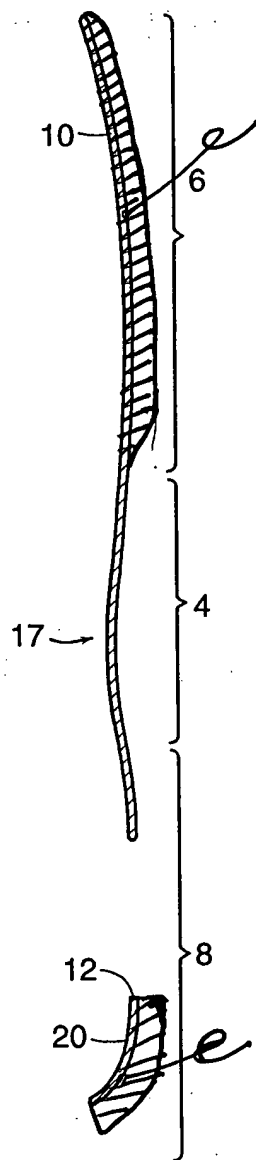


FIG. 1B

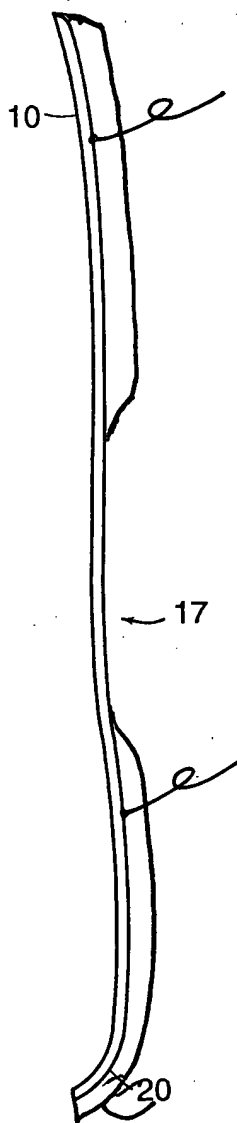


FIG. 1C

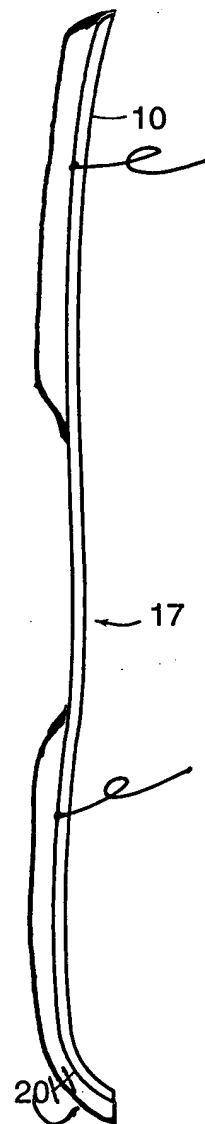


FIG. 1D

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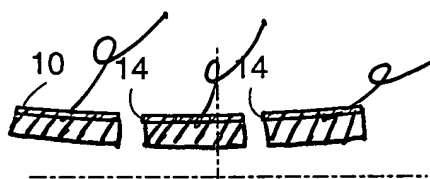


FIG. 1E

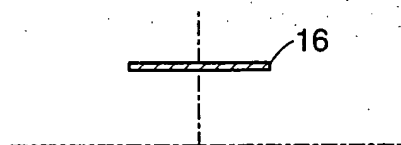


FIG. 1F

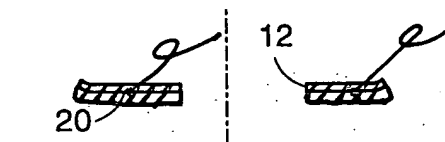


FIG. 1G

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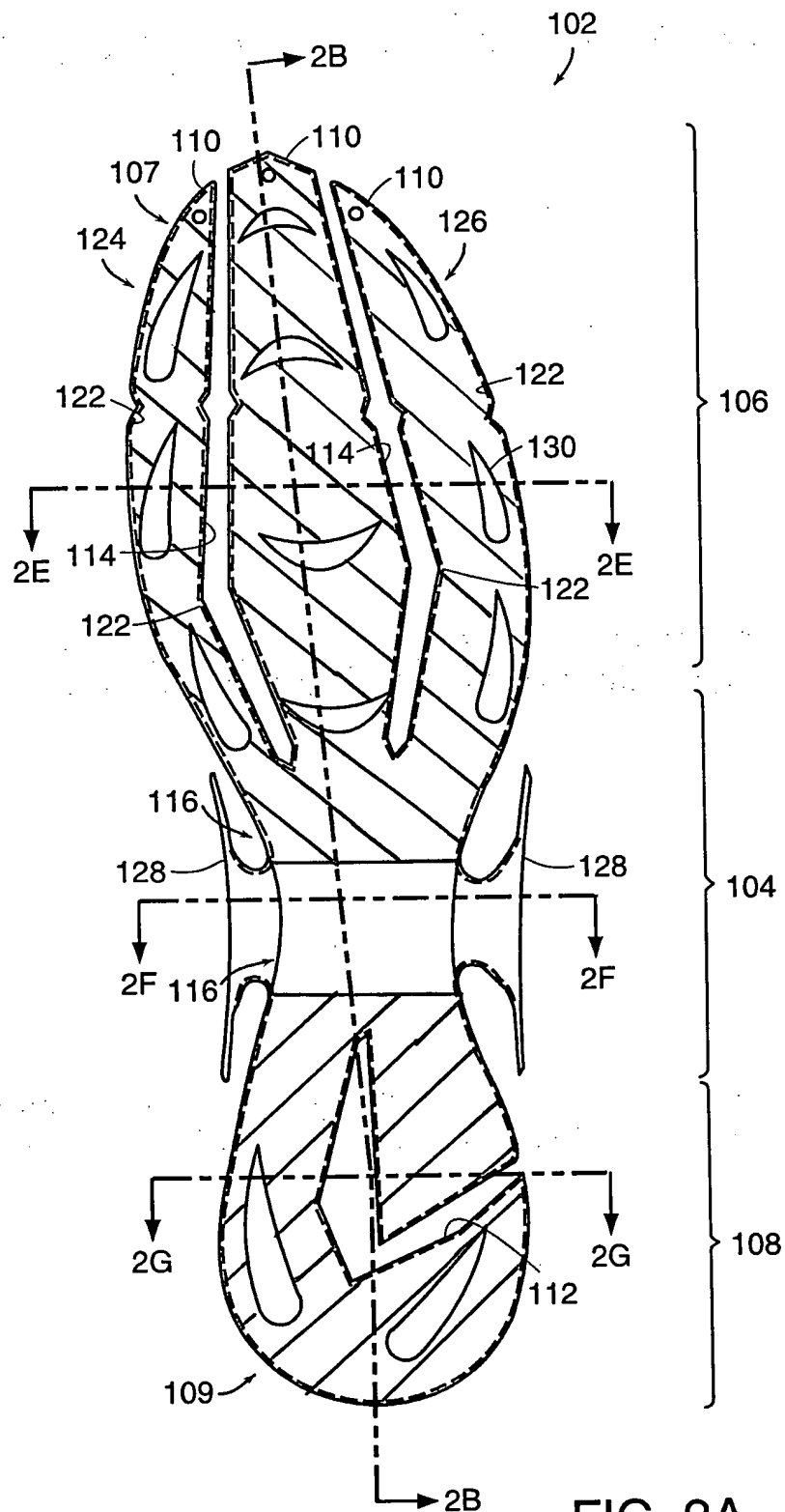


FIG. 2A

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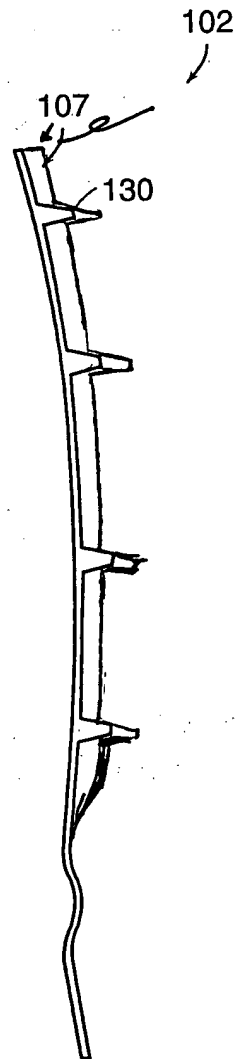


FIG. 2B

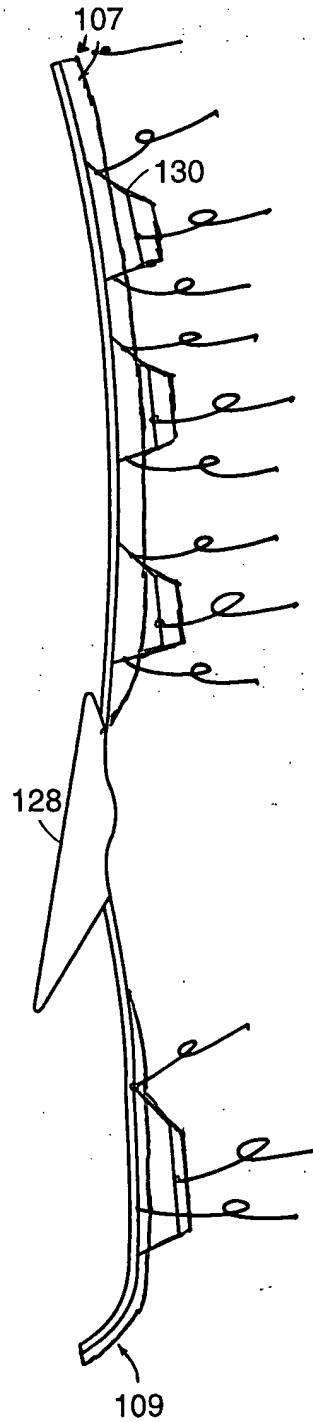


FIG. 2C

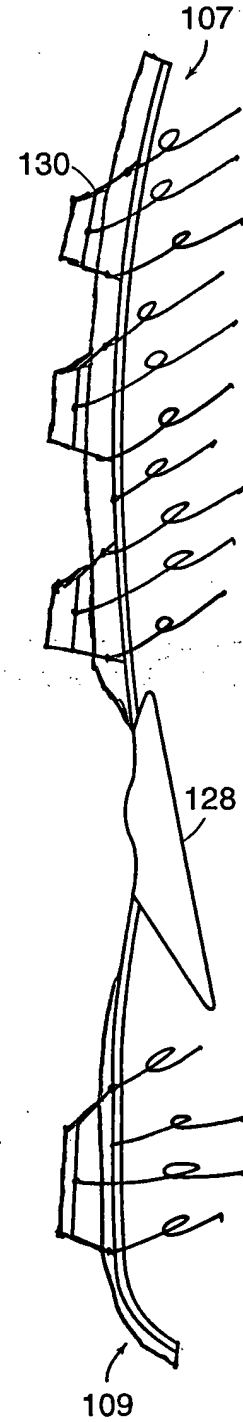


FIG. 2D

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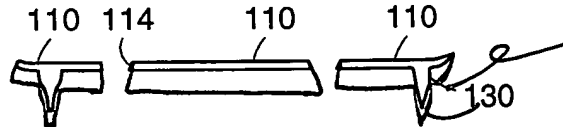


FIG. 2E



FIG. 2F

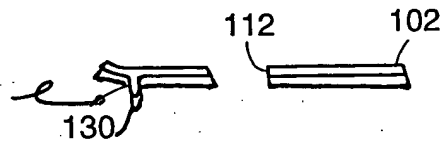


FIG. 2G

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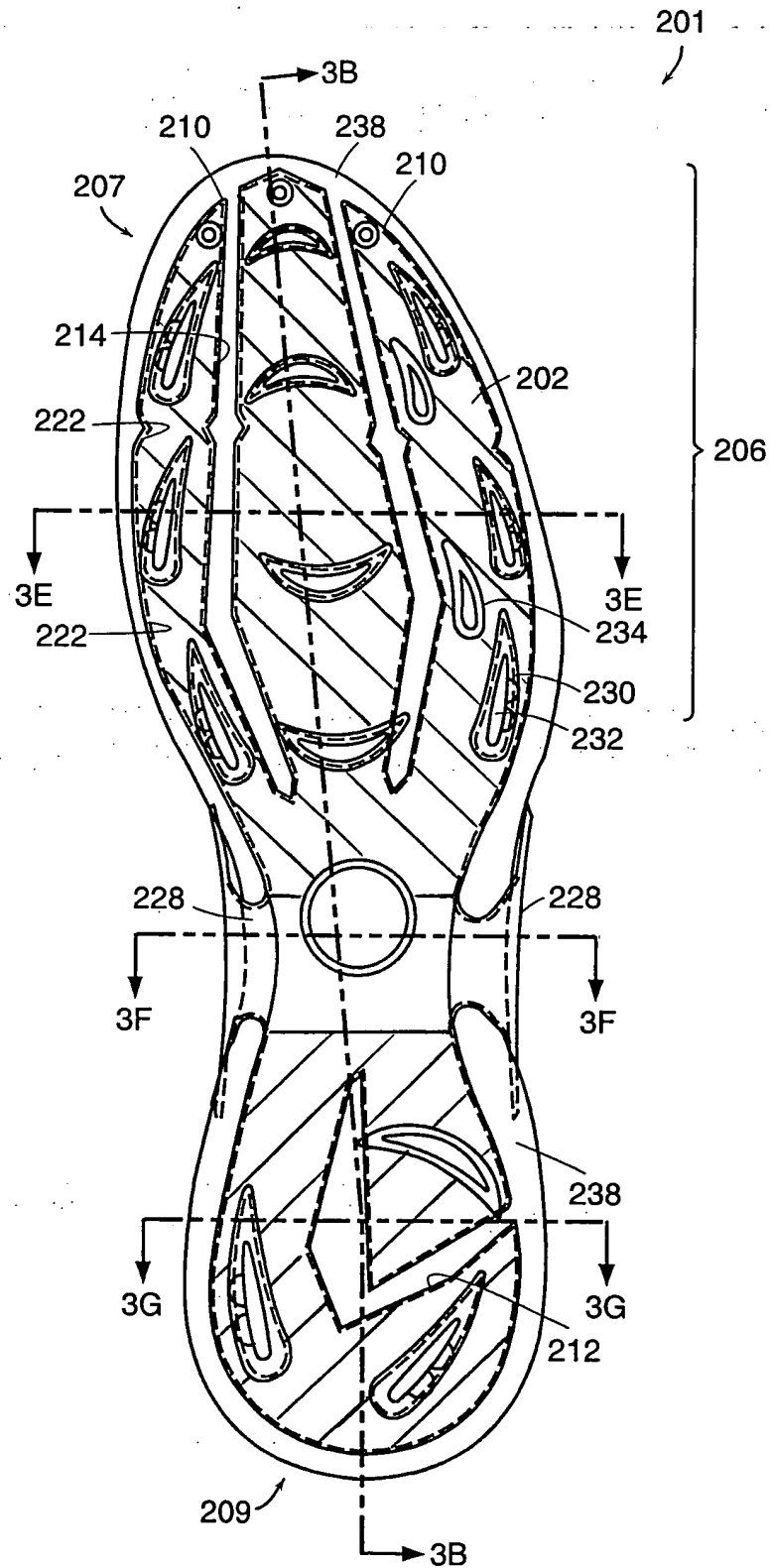


FIG. 3A

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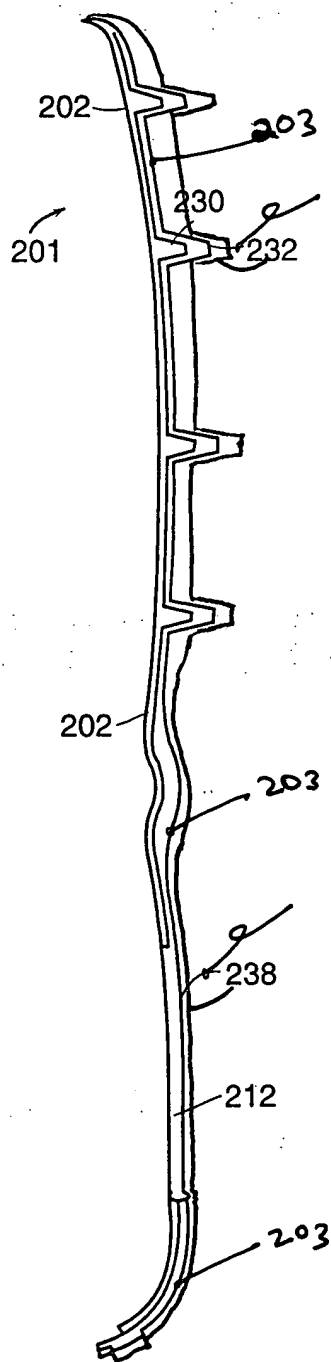


FIG. 3B

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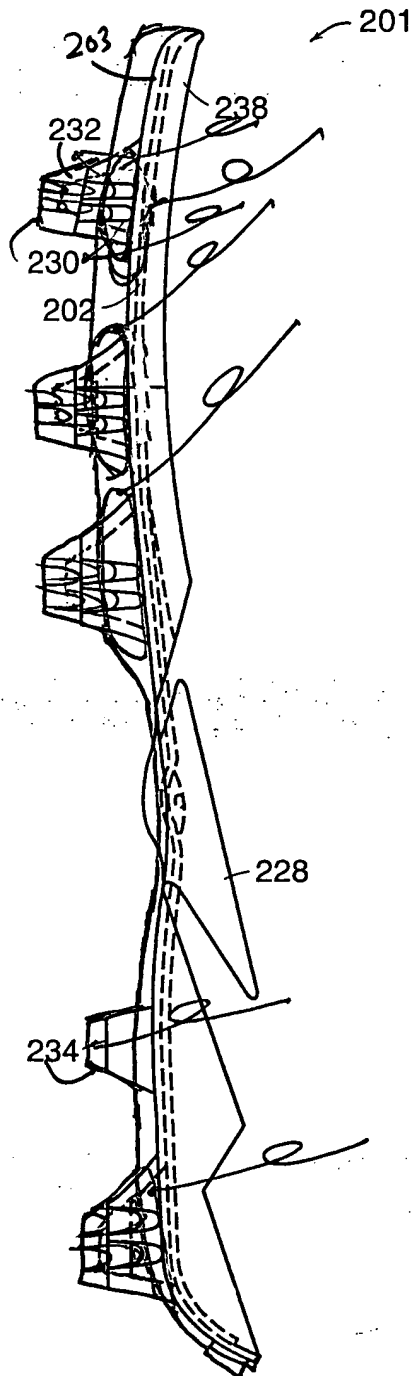


FIG. 3C

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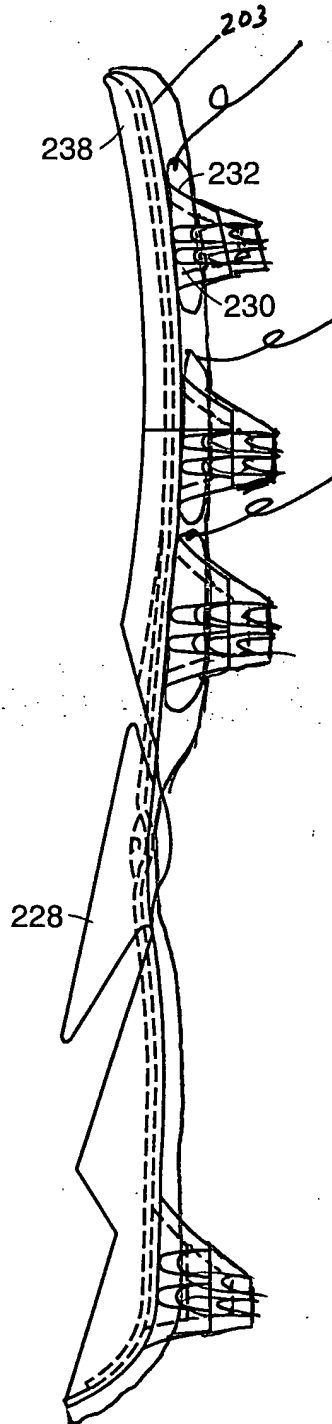


FIG. 3D

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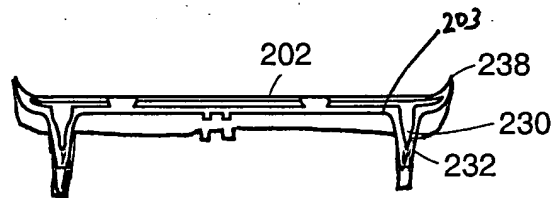


FIG. 3E

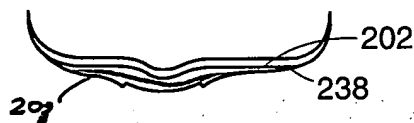


FIG. 3F

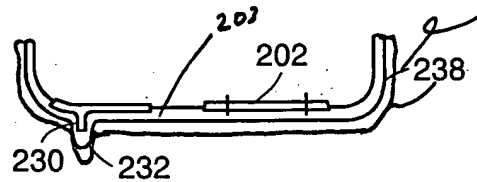


FIG. 3G

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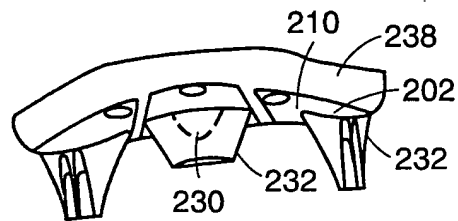


FIG. 3H

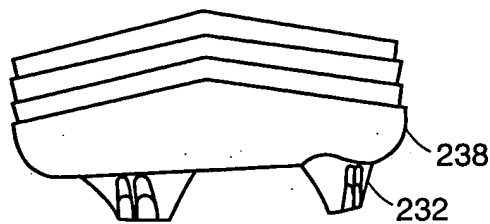


FIG. 3I

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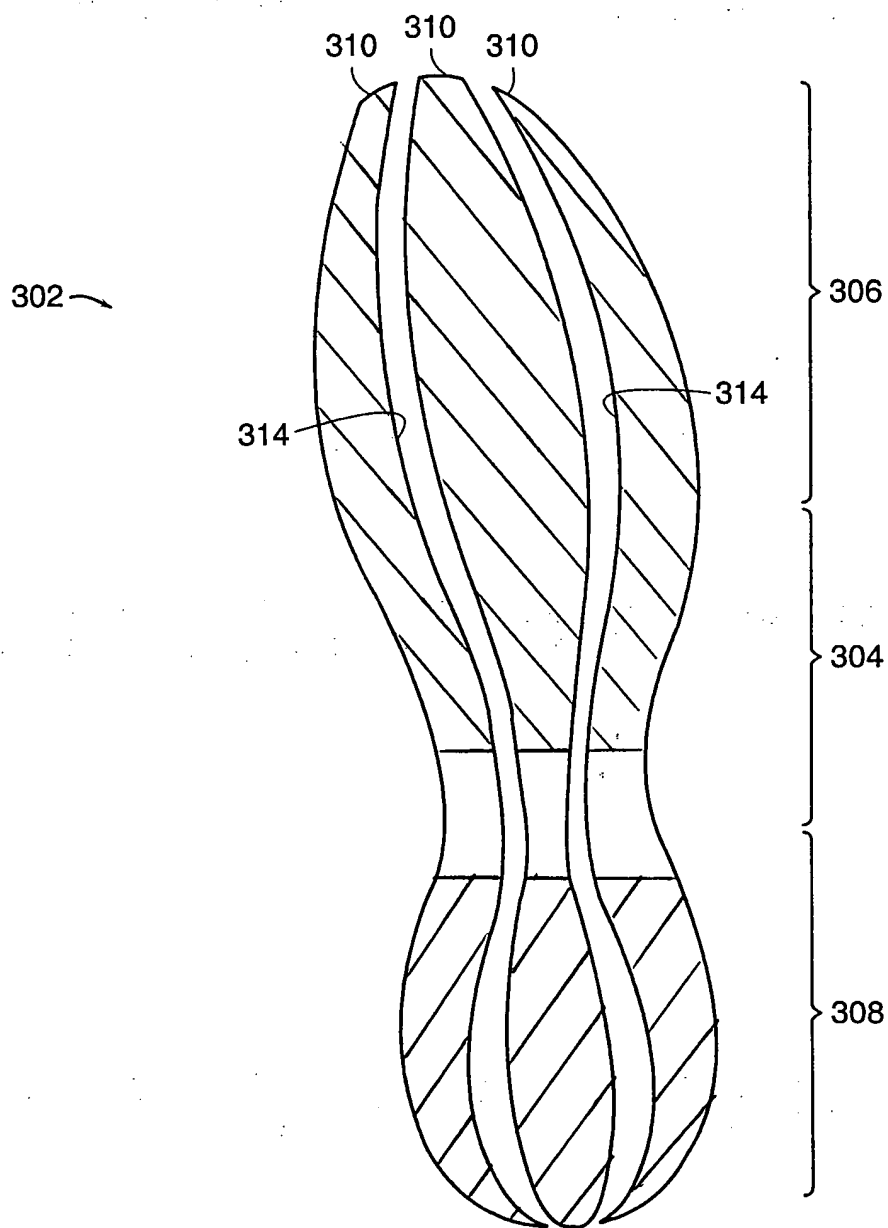


FIG. 4